

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

THE CAT BALL, LLC,)
a Washington Limited Liability Company,)
PLAINTIFF,) **FALSE ADVERTISING, TRADEMARK**
v.) **INFRINGEMENT IN VIOLATION OF**
FURHAVEN PET PRODUCTS, INC.,) **THE LANHAM ACT, PACKAGING**
a Washington Corporation,) **TRADE DRESS INFRINGEMENT,**
DEFENDANT.) **PRODUCT TRADE DRESS**
) **INFRINGEMENT AND UNFAIR**
) **COMPETITION**
) **DEMAND FOR JURY TRIAL**
) **CASE NUMBER:**

PLAINTIFF THE CAT BALL, LLC alleges for its Complaint as follows:

I. NATURE OF THE CASE

1. This is an action under the Lanham Act, 15 U.S.C. §§ 1125 et seq., and state law for false advertising, trademark infringement in violation of the Lanham Act, packaging trade dress infringement, product trade dress infringement and unfair competition arising from

1 DEFENDANT's unlawful making, importing, using, selling and offering to sell cat beds where
2 DEFENDANT used knowingly false advertisements, used PLAINTIFF's trademarks and used
3 both PLAINTIFF's packaging trade dress and product design trade dress. DEFENDANT's acts
4 are willful and are likely to cause confusion amongst consumers.

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6 **II. JURISDICTION AND VENUE**

7 2. The Court has jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. §
8 1338(b) (unfair competition), and 28 U.S.C. § 1367(a) (supplemental jurisdiction based on
9 federal question jurisdiction).

10 3. Venue is proper under 28 U.S.C. § 1391 (general) and 28 U.S.C. § 1400(b) (designs)
11 because a substantial part of the events or omissions giving rise to the claims occurred in this
12 judicial district and because both parties are located in this judicial district.

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14 **III. THE PARTIES**

15 4. PLAINTIFF THE CAT BALL, LLC is a manufacturer, seller and distributor of designer
16 cat beds and is a Washington limited liability company with a place of business in Bellevue, WA
17 98008.

18 5. PLAINTIFF THE CAT BALL, LLC, including through its authorized retailers,
19 manufactures, sells, offers for sale and/or distributes designer cat beds including the "CAT
20 BALL" cat bed that is the subject of this lawsuit, in the United States including in this judicial
21 district.

22 6. On information and belief, DEFENDANT FURHAVEN PET PRODUCTS, INC.

1 (FURHAVEN) is a manufacturer, seller and distributor of a cat bed that DEFENDANT has sold
2 as the "SLEEP AND PEEK" cat bed.

3 7. On information and belief, DEFENDANT is a Washington corporation with a place of
4 business at 702 Kentucky Street, Suite 531, Bellingham, Washington 98225, and has been
5 selling, importing, offering for sale and otherwise conducting business related to pet beds in this
6 judicial district.

7 8. For convenience, certain subject matter headings are provided below. Such headings are
8 for convenience only and do not constitute allegations of the Complaint. Further, the facts under
9 such headings are not limited solely to such headings: facts under one heading can and do relate
10 to and/or support allegations or claims under another heading.

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12 **IV. FACTUAL BACKGROUND**

13 A. PLAINTIFF'S "CAT BALL" CAT BED PRODUCT

14 9. PLAINTIFF makes, offers for sale and sells a certain cat bed known as the CAT BALL.

15 10. One example of the CAT BALL cat bed is reproduced below:



11
12 **Cat Ball Kitty Cave Bed in Stripes and**
13 **Geometric**

14. Some further photos showing true and accurate representations of PLAINTIFF'S the CAT
15 BALL cat bed are provided in Exhibit A and Exhibit B hereto.

16. **B. DEFENDANT'S COPY OF THE "CAT BALL" CAT BED**

17. DEFENDANT makes, offers for sale and sells cat beds.

18. DEFENDANT makes, offers for sale and sells a certain cat bed sometimes referred to as
19 the FURHAVEN SLEEP AND PEEK.

20. One example of a FURHAVEN SLEEP AND PEEK cat bed is reproduced below:



15. Hereinafter, unless the context indicates otherwise, the cat bed described for example in
16 paragraph 13 and shown in paragraph 14 shall be referred to as "DEFENDANT's accused cat
17 bed".

18. The example of DEFENDANT's accused cat bed in paragraph 14 can be found at
19 <http://www.groupon.com/deals/gg-furhaven-cat-ball-sleep-and-peak#> (second photo). A true and
20 accurate copy of the portion of the web-page showing DEFENDANT's accused cat bed is
21 attached hereto as Exhibit C.

22. A true and accurate copy of an AliBaba web-page advertising DEFENDANT's accused
23 cat bed is Exhibit D hereto.

24. A true and accurate copy of a BargainEZ web-page advertising DEFENDANT's accused
25 cat bed is Exhibit E hereto.

26. A true and accurate copy of a DealHandler web-page advertising DEFENDANT's
27 accused cat bed is Exhibit F hereto.

1 20. A true and accurate copy of a DealUPA web-page advertising DEFENDANT's accused
2 cat bed is Exhibit G hereto.

3 21. A true and accurate copy of a Yipit web-page advertising DEFENDANT's accused cat
4 bed is Exhibit H hereto.

5 22. A true and accurate copy of a Zipmydeals web-page advertising DEFENDANT's accused
6 cat bed is Exhibit I hereto.

7
8 C. DEFENDANT'S KNOWING ACTS: DEFENDANT PURCHASED ONE OF
9 PLAINTIFF'S "CAT BALL" CAT BEDS IN 2012 THEN COPIED IT

10 23. On information and belief, Jaynie Gablehouse is the "Creative Manager" at
11 DEFENDANT FURHAVEN.

12 24. A true and accurate copy of a web-page from LinkedIn that identifies Ms. Gablehouse as
13 the "Creative Manager" at DEFENDANT FURHAVEN is Exhibit J hereto.

14 25. On July 12, 2012, a person identifying herself as "Jaynie Gablehouse" purchased one of
15 PLAINTIFF's CAT BALL cat beds in tangerine and hot pink.

16 26. A true and accurate copy of the order form for the purchase by "Jaynie Gablehouse" of
17 one of PLAINTIFF's CAT BALL cat beds is Exhibit K hereto.

18 27. On information and belief, Jaynie Gablehouse that is the "Creative Manager" at
19 DEFENDANT FURHAVEN is the same "Jaynie Gablehouse" that purchased one of
20 PLAINTIFF's CAT BALL cat beds on July 12, 2012.

21 28. On information and belief, DEFENDANT FURHAVEN introduced DEFENDANT's
22 accused cat bed after July 12, 2012.

1 29. On information and belief, DEFENDANT FURHAVEN copied the shape of
2 PLAINTIFF's CAT BALL cat bed purchased by "Jaynie Gablehouse".

3 30. On information and belief, DEFENDANT FURHAVEN copied the look and feel of
4 PLAINTIFF's CAT BALL cat bed purchased by "Jaynie Gablehouse".

5 31. On information and belief, DEFENDANT FURHAVEN copied the packaging of
6 PLAINTIFF's CAT BALL cat bed purchased by "Jaynie Gablehouse".

7 32. DEFENDANT's accused cat bed is made of inferior materials compared to PLAINTIFF's
8 CAT BALL cat bed.

9 33. DEFENDANT's accused cat bed is of low quality compared to PLAINTIFF's CAT BALL
10 cat bed.

11 34. On information and belief, the inferior materials and quality of DEFENDANT's accused
12 cat bed are damaging the reputation of PLAINTIFF and PLAINTIFF's CAT BALL cat bed.

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14 **V. DEFENDANT'S WRONGFUL ACTS**

15 A. DEFENDANT INTENTIONALLY FALSELY ADVERTISED DEFENDANT'S
16 ACCUSED CAT BED AS "UNIQUE" OR "ONE OF A KIND"

17 35. As noted above for example in paragraphs 23-34, DEFENDANT purchased and copied
18 PLAINTIFF's CAT BALL cat bed.

19 36. Attached hereto as Exhibit L(a) – L(d) is a true and accurate copy of a 2013 FURHAVEN
20 catalog from DEFENDANT's web-site.

21 37. Page 5 of DEFENDANT's catalog in Exhibit L(a) – L(d) advertises DEFENDANT's
22 accused cat bed.

1 38. The first line of DEFENDANT's advertisement Exhibit L(a) – L(d) states that
2 DEFENDANT's "Sleep And Peek" cat bed is a "Unique 'ball' style foam bed.".

3 39. The statement in DEFENDANT's advertisement discussed in paragraphs 36-38 is false.

4 40. The statement in DEFENDANT's advertisement discussed in paragraphs 36-38 is false
5 because DEFENDANT's accused cat bed is indistinguishable from PLAINTIFF's CAT BALL cat
6 bed and thus cannot be "unique".

7 41. The statement in DEFENDANT's advertisement discussed in paragraphs 36-38 is false
8 because by definition a copy of something cannot be "unique".

9 42. The statement in DEFENDANT's advertisement discussed in paragraphs 36-38 is
10 intentionally false because DEFENDANT knows that DEFENDANT copied PLAINTIFF's CAT
11 BALL cat bed, and thus DEFENDANT knows that DEFENDANT's accused cat bed is not
12 "unique".

13 43. The statement in DEFENDANT's advertisement discussed in paragraphs 36-38
14 misrepresents the nature, characteristics, and/or qualities of DEFENDANT's accused cat bed.

15 44. On information and belief, the statement in DEFENDANT's advertisement discussed in
16 paragraphs 36-38 intentionally misrepresents the nature, characteristics, and/or qualities of
17 DEFENDANT's accused cat bed.

18 45. Attached hereto as Exhibit M is a true and accurate copy of a 2014 FURHAVEN catalog
19 from DEFENDANT's web-site, <http://www.furhaven.com/sites/default/files/content/catalog.pdf>.

20 46. Page 4 of DEFENDANT's catalog in Exhibit M advertises DEFENDANT's accused cat
21 bed.

22 47. The first line of DEFENDANT's advertisement Exhibit M states that DEFENDANT's

1 "sleep and peek" cat bed is a "Unique 'ball' style foam bed.".

2 48. The statement in DEFENDANT's advertisement discussed in paragraphs 45-47 is false.

3 49. The statement in DEFENDANT's advertisement discussed in paragraphs 45-47 is false
4 because DEFENDANT's accused cat bed is indistinguishable from PLAINTIFF's CAT BALL cat
5 bed.

6 50. The statement in DEFENDANT's advertisement discussed in paragraphs 45-47 is false
7 because by definition a copy of something else cannot be "unique".

8 51. The statement in DEFENDANT's advertisement discussed in paragraphs 45-47 is
9 intentionally false because DEFENDANT knows that DEFENDANT copied PLAINTIFF's CAT
10 BALL cat bed, and thus DEFENDANT knows that DEFENDANT's accused cat bed is not
11 "unique".

12 52. The statement in DEFENDANT's advertisement discussed in paragraphs 45-47
13 misrepresents the nature, characteristics, and/or qualities of DEFENDANT's accused cat bed.

14 53. On information and belief, the statement in DEFENDANT's advertisement discussed in
15 paragraphs 45-47 intentionally misrepresents the nature, characteristics, and/or qualities of
16 DEFENDANT's accused cat bed.

17 54. Attached hereto as Exhibit N is a true and accurate copy of an advertisement on
18 Groupon for DEFENDANT's accused cat bed.

19 55. Page 5 of DEFENDANT's advertisement in Exhibit N advertises DEFENDANT's
20 accused cat bed.

21 56. The first line of DEFENDANT's advertisement Exhibit N states that DEFENDANT's
22 accused cat bed has a "one-of-a-kind design".

1 57. The statement in DEFENDANT's advertisement discussed in paragraphs 54-56 is false.
2 58. The statement in DEFENDANT's advertisement discussed in paragraphs 54-56 is false
3 because DEFENDANT's accused cat bed is indistinguishable from PLAINTIFF's CAT BALL cat
4 bed.
5 59. The statement in DEFENDANT's advertisement discussed in paragraphs 54-56 is false
6 because by definition a copy of something else cannot be "one-of-a-kind".
7 60. The statement in DEFENDANT's advertisement discussed in paragraphs 54-56 is
8 intentionally false because DEFENDANT knows that DEFENDANT copied PLAINTIFF's CAT
9 BALL cat bed, and thus DEFENDANT knows that DEFENDANT's accused cat bed is not a
10 "one-of-a-kind design".

11 61. The statement in DEFENDANT's advertisement discussed in paragraphs 54-56
12 misrepresents the nature, characteristics, and/or qualities of DEFENDANT's accused cat bed.

13 62. On information and belief, the statement in DEFENDANT's advertisement discussed in
14 paragraphs 54-56 intentionally misrepresents the nature, characteristics, and/or qualities of
15 DEFENDANT's accused cat bed.

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17 **B. DEFENDANT HAS WRONGFULLY USED PLAINTIFF'S "CAT BALL" BRAND**
18 **NAME AND TRADEMARK**

19 63. PLAINTIFF has publicly identified its brand of cat bed shown for example in Exhibits A
20 and B as the CAT BALL.

21 64. PLAINTIFF has branded the cat bed shown for example in Exhibits A and B as the CAT
22 BALL.

1 65. PLAINTIFF has used the CAT BALL trade name for its brand of cat bed shown for
2 example in Exhibits A and B.

3 66. PLAINTIFF has offered for sale and sold its brand of cat bed shown for example in
4 Exhibits A and B under the CAT BALL trademark.

5 67. On information and belief, consumers view the brand name CAT BALL as an indicator
6 the product's source.

7 68. On information and belief, PLAINTIFF's trademark CAT BALL is distinctive.

8 69. On information and belief, PLAINTIFF's trademark CAT BALL is well-known.

9 70. PLAINTIFF has filed for federal trademark protection for CAT BALL.

10 71. As of the date of filing this Complaint, February 28, 2014, PLAINTIFF's federal
11 trademark application for CAT BALL is currently pending in the U.S. Patent and Trademark
12 Office but has not yet received substantive examination.

13 72. PLAINTIFF has filed for federal trademark protection for THE CAT BALL.

14 73. As of the date of filing this Complaint, February 28, 2014, PLAINTIFF's federal
15 trademark application for THE CAT BALL is currently pending in the U.S. Patent and
16 Trademark Office but has not yet received substantive examination.

17 74. Defendant has offered DEFENDANT's accused cat bed for sale using PLAINTIFF'S
18 brand name CAT BALL.

19 75. On information and belief, Defendant has sold DEFENDANT's accused cat bed using
20 PLAINTIFF'S brand name CAT BALL.

21 76. Exhibits C through I show true and accurate copies of advertisements for DEFENDANT's
22 accused cat beds in which DEFENDANT refers to its product as the "FURHAVEN CAT BALL

1 SLEEP AND PEEK".

2 77. Exhibits C through I show true and accurate copies of advertisements for DEFENDANT's
3 accused cat beds in which DEFENDANT uses PLAINTIFF'S brand name CAT BALL to sell
4 DEFENDANT's SLEEP AND PEEK cat beds.

5 78. On information and belief, DEFENDANT knew of PLAINTIFF's CAT BALL brand
6 name at the time the ads in Exhibits C through I were created.

7 79. On information and belief, DEFENDANT knew of PLAINTIFF's CAT BALL brand
8 name at the time the ads in Exhibits C through I were published.

9 80. On information and belief, DEFENDANT intentionally traded on PLAINTIFF's CAT
10 BALL brand name in using PLAINTIFF's CAT BALL brand name in the ads in Exhibits C
11 through I.

12 81. DEFENDANT copied PLAINTIFF's CAT BALL brand name.

13 82. DEFENDANT's use of PLAINTIFF's CAT BALL trademark is likely to cause confusion,
14 or to cause mistake, or to deceive as to the affiliation, connection, of DEFENDANT's accused cat
15 bed with PLAINTIFF, and/or as to the origin, sponsorship, or approval of DEFENDANT's
16 accused cat bed, or commercial activities by PLAINTIFF.

17 83. DEFENDANT intentionally copied PLAINTIFF's CAT BALL trademark in order to
18 cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, of
19 DEFENDANT's accused cat bed with PLAINTIFF, and/or as to the origin, sponsorship, or
20 approval of DEFENDANT's accused cat bed, or commercial activities by PLAINTIFF.

21 84. On information and belief, DEFENDANT's use of PLAINTIFF's CAT BALL trademark
22 has caused actual confusion among consumers.

1 85. Attached hereto as Exhibit O is a true and accurate copy of a web-page from Pinterest,
2 www.pinterest.com/pin/380132024768400482, in which a Pinterest user repeated
3 DEFENDANT's use of PLAINTIFF's CAT BALL trademark in association with DEFENDANT's
4 accused cat bed.

5 86. The copy of the web-page from Pinterest in Exhibit O is one example of DEFENDANT's
6 use of PLAINTIFF's CAT BALL trademark having caused actual confusion among consumers.

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8 **C. DEFENDANT HAS COPIED PLAINTIFF'S PACKAGING TRADE DRESS IN THE**
9 **CAT BALL CAT BED**

10 87. PLAINTIFF has packaged, and offered for sale and sold, its CAT BALL cat bed in a
11 packaging presentation as shown below; the photos below are also provided in Exhibits P and Q
12 hereto.



13 88. On information and belief, consumers view the packaging of the CAT BALL cat bed as
14 an indicator the product's source.

15 89. On information and belief, the packaging of the CAT BALL cat bed is distinctive.

16 90. On information and belief, the packaging of the CAT BALL cat bed is well-known.

17 91. Attached hereto as Exhibit R is a true and accurate copy of a review of the CAT BALL
18 cat bed at cattipper.com <http://www.cattipper.com/reviews/2012/review-the-cat-ball.html>.

19 92. The review of the CAT BALL cat bed at cattipper.com states and shows in part:

20 We reviewed the Cat Ball in sage green polyester microfiber although you'll find a wide
21 variety of prints and colors to complement your decor. The interior of the Cat Ball is
100% cotton.

1 The Cat Ball arrives folded...



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10 ...and the seams are finished with hand cut bias in a coordinating print...



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22 93. The review of the CAT BALL cat bed at cattipper.com is one example demonstrating that

1 the packaging of the CAT BALL cat bed is an indicator the product's source.

2 94. The review of the CAT BALL cat bed at cattipper.com is one example demonstrating that
3 PLAINTIFF'S packaging for CAT BALL cat bed is distinctive.

4 95. The review of the CAT BALL cat bed at cattipper.com is one example demonstrating that
5 PLAINTIFF'S packaging for CAT BALL cat bed is well known.

6 96. DEFENDANT has packaged, offered for sale and sold, DEFENDANT's accused cat bed
7 in a packaging presentation as shown below; the photos below are also provided in Exhibits S
8 and T hereto.



21 97. Photographs comparing the packaging and presentation of the CAT BALL cat bed against
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1 DEFENDANT's cat bed are shown below; the photos below are also provided in Exhibits U and
2 V hereto.



21 98. DEFENDANT'S packaging for DEFENDANT's accused cat bed is indistinguishable from
22 PLAINTIFF's packaging for PLAINTIFF's CAT BALL cat bed.

1 99. On information and belief, DEFENDANT knew of PLAINTIFF'S packaging of the CAT
2 BALL cat bed at the time DEFENDANT created DEFENDANT's accused cat bed.

3 100. On information and belief, DEFENDANT knew of PLAINTIFF'S packaging of the CAT
4 BALL cat bed at the time DEFENDANT offered for sale and sold DEFENDANT's accused cat
5 bed.

6 101. On information and belief, DEFENDANT copied PLAINTIFF'S packaging of the CAT
7 BALL cat bed.

8 102. DEFENDANT's use of packaging indistinguishable from the packaging for PLAINTIFF's
9 CAT BALL cat bed is likely to cause confusion, or to cause mistake, or to deceive as to the
10 affiliation, connection, of DEFENDANT's accused cat bed with PLAINTIFF, and/or as to the
11 origin, sponsorship, or approval of DEFENDANT's accused cat bed, or commercial activities by
12 PLAINTIFF.

13 103. On information and belief, DEFENDANT intentionally copied the packaging for
14 PLAINTIFF's CAT BALL cat bed in order to cause confusion, or to cause mistake, or to deceive
15 as to the affiliation, connection, of DEFENDANT's accused cat bed with PLAINTIFF, and/or as
16 to the origin, sponsorship, or approval of DEFENDANT's accused cat bed, or commercial
17 activities by PLAINTIFF.

18 104. On information and belief, DEFENDANT's use of PLAINTIFF's CAT BALL packaging
19 has caused actual confusion among consumers.

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21 D. DEFENDANT HAS COPIED PLAINTIFF'S TRADE DRESS SHAPE IN THE CAT
22 BALL CAT BED

1 105. PLAINTIFF has offered for sale and sold, its CAT BALL cat bed in a trade dress shape as
2 shown, for example, in Exhibit A and Exhibit B hereto.

3 106. On information and belief, consumers view the trade dress shape of the CAT BALL cat
4 bed as an indicator the product's source.

5 107. On information and belief, the trade dress shape of the CAT BALL cat bed is distinctive.

6 108. On information and belief, the trade dress shape of the CAT BALL cat bed is well-
7 known.

8 109. The review in Exhibit R of the CAT BALL cat bed at cattipper.com is one example
9 demonstrating that the trade dress shape of the CAT BALL cat bed is an indicator the product's
10 source.

11 110. The review of the CAT BALL cat bed at cattipper.com is one example demonstrating that
12 PLAINTIFF'S trade dress shape for CAT BALL cat bed is distinctive.

13 111. The review of the CAT BALL cat bed at cattipper.com is one example demonstrating that
14 PLAINTIFF'S trade dress shape for CAT BALL cat bed is well known.

15 112. DEFENDANT has offered for sale and sold, DEFENDANT's accused cat bed in a trade
16 dress shape as shown for example in Exhibits C to I.

17 113. Photographs comparing the trade dress shape of the CAT BALL cat bed against
18 DEFENDANT's cat bed from different angles (front, back, top-up, bottom-up, perspective); the
19 photos below are also provided in Exhibits W to AA hereto.



114. DEFENDANT'S trade dress shape for DEFENDANT's accused cat bed is indistinguishable from PLAINTIFF's trade dress shape for PLAINTIFF's CAT BALL cat bed.

115. On information and belief, DEFENDANT knew of PLAINTIFF'S trade dress shape of the CAT BALL cat bed at the time DEFENDANT created DEFENDANT's accused cat bed.

116. On information and belief, DEFENDANT knew of PLAINTIFF'S trade dress shape of the CAT BALL cat bed at the time DEFENDANT offered for sale and sold DEFENDANT's accused cat bed.

1 117. On information and belief, DEFENDANT copied PLAINTIFF'S trade dress shape of the
2 CAT BALL cat bed.

3 118. DEFENDANT's use of trade dress shape indistinguishable from the trade dress shape for
4 PLAINTIFF's CAT BALL is likely to cause confusion, or to cause mistake, or to deceive as to
5 the affiliation, connection, of DEFENDANT's accused cat bed with PLAINTIFF, and/or as to the
6 origin, sponsorship, or approval of DEFENDANT's accused cat bed, or commercial activities by
7 PLAINTIFF.

8 119. On information and belief, DEFENDANT intentionally copied the trade dress shape for
9 PLAINTIFF's CAT BALL cat bed in order to cause confusion, or to cause mistake, or to deceive
10 as to the affiliation, connection, of DEFENDANT's accused cat bed with PLAINTIFF, and/or as
11 to the origin, sponsorship, or approval of DEFENDANT's accused cat bed, or commercial
12 activities by PLAINTIFF.

13 120. On information and belief, DEFENDANT's use of PLAINTIFF's CAT BALL trade dress
14 shape has caused actual confusion among consumers.

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16 **FIRST CAUSE OF ACTION**

17 **FEDERAL FALSE ADVERTISING IN VIOLATION OF SECTION 43(a)(1)(B) OF THE**
18 **LANHAM ACT, 15 U.S.C. § 1125(a)(1)(B)**

19 121. PLAINTIFF realleges paragraphs 1 through 120 above as if fully set forth herein.

20 122. DEFENDANT's advertisements have stated that DEFENDANT's accused products are
21 "unique". These statements are materially false statements that misrepresent the nature,
22 characteristics and qualities of DEFENDANT's accused products. These are material

1 misrepresentations upon which customers or potential customers have, and will rely.
 2 DEFENDANT's actions therefore mislead and harm customers and consumers as well as damage
 3 PLAINTIFFS' sales, good name and reputation in violation of Section 43(a)(1)(B) of the Lanham
 4 Act, 15 U.S.C. § 1125(a)(1)(B).

5 123. DEFENDANT's advertisements have stated that DEFENDANT's accused products are
 6 "one-of-a-kind". These statements are materially false statements that misrepresent the nature,
 7 characteristics and qualities of DEFENDANT's accused products. These are material
 8 misrepresentations upon which customers or potential customers have, and will rely.
 9 DEFENDANT's actions therefore mislead and harm customers and consumers as well as damage
 10 PLAINTIFFS' sales, good name and reputation in violation of Section 43(a)(1)(B) of the Lanham
 11 Act, 15 U.S.C. § 1125(a)(1)(B).

12 124. DEFENDANT willfully and intentionally misrepresented the nature, characteristics,
 13 qualities, or geographic origin of DEFENDANT's goods, services, or commercial activities.

14 125. PLAINTIFF has sustained and will continue to sustain substantial damages and harm
 15 including harm to PLAINTIFF's reputation and goodwill due to DEFENDANT's acts.

16 126. PLAINTIFF is entitled to compensatory, statutory and enhanced damages, attorneys' fees
 17 and costs of suit incurred in connection with this action, and preliminary and permanent
 18 injunctive relief.

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20 **SECOND CAUSE OF ACTION**

21 **UNFAIR COMPETITION BY USE OF PLAINTIFF'S "CAT BALL" BRAND NAME IN**
 22 **VIOLATION OF SECTION 43(a)(1)(A) OF THE LANHAM ACT, 15 U.S.C. §**

1 **1125(a)(1)(A)**

2 127. PLAINTIFF realleges paragraphs 1 through 126 above as if fully set forth herein.

3 128. Defendant has advertised, offered for sale and sold DEFENDANT's accused cat bed using
4 PLAINTIFF'S brand name and trademark "CAT BALL".

5 129. This use of PLAINTIFF'S brand name and trademark "CAT BALL" on or in connection
6 with DEFENDANT's goods or services, and/or on DEFENDANT's containers for its goods,
7 constitutes use in of a word, term, name that is a false designation of origin, false or misleading
8 description of fact, or false or misleading representation of fact, which is likely to cause
9 confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of
10 DEFENDANT with PLAINTIFF, and also is likely to cause confusion, or to cause mistake, or to
11 deceive as to the origin, sponsorship, or approval of DEFENDANT's goods, services, or
12 commercial activities by PLAINTIFF.

13 130. DEFENDANT willfully and intentionally committed the acts described in the preceding
14 two paragraphs.

15 131. PLAINTIFF has sustained and will continue to sustain substantial damages and harm
16 including harm to PLAINTIFF's reputation and goodwill due to DEFENDANT's acts.

17 132. PLAINTIFF is entitled to compensatory, statutory and enhanced damages, attorneys' fees
18 and costs of suit incurred in connection with this action, and preliminary and permanent
19 injunctive relief.

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21 **THIRD CAUSE OF ACTION**

22 **UNFAIR COMPETITION BY USE OF PACKAGING TRADE DRESS IN VIOLATION**

1 **OF SECTION 43(a)(1)(A) OF THE LANHAM ACT, 15 U.S.C. § 1125(a)(1)(A)**

2 133. PLAINTIFF realleges paragraphs 1 through 133 above as if fully set forth herein.

3 134. Defendant has advertised, offered for sale and sold DEFENDANT's accused cat bed using
4 packaging trade dress that is substantially similar to PLAINTIFF'S packaging trade dress in
5 PLAINTIFF's CAT BALL cat bed.

6 135. This use of PLAINTIFF'S packaging trade dress in PLAINTIFF's CAT BALL cat bed on
7 or in connection with DEFENDANT's goods or services, and/or on DEFENDANT's containers
8 for its goods, constitutes use in of a word, term, name that is a false designation of origin, false or
9 misleading description of fact, or false or misleading representation of fact, which is likely to
10 cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association
11 of DEFENDANT with PLAINTIFF, and also is likely to cause confusion, or to cause mistake, or
12 to deceive as to the origin, sponsorship, or approval of DEFENDANT's goods, services, or
13 commercial activities by PLAINTIFF.

14 136. DEFENDANT willfully and intentionally committed the acts described in the preceding
15 two paragraphs.

16 137. PLAINTIFF has sustained and will continue to sustain substantial damages and harm
17 including harm to PLAINTIFF's reputation and goodwill due to DEFENDANT's acts.

18 138. PLAINTIFF is entitled to compensatory, statutory and enhanced damages, attorneys' fees
19 and costs of suit incurred in connection with this action, and preliminary and permanent
20 injunctive relief.

21 **22 FOURTH CAUSE OF ACTION**

1 **UNFAIR COMPETITION BY USE OF PRODUCT TRADE DRESS IN VIOLATION OF**
2 **SECTION 43(a)(1)(A) OF THE LANHAM ACT, 15 U.S.C. § 1125(a)(1)(A)**

3 139. PLAINTIFF realleges paragraphs 1 through 138 above as if fully set forth herein.

4 140. Defendant has advertised, offered for sale and sold DEFENDANT's accused cat bed using
5 product trade dress that is substantially similar to PLAINTIFF'S product trade dress in
6 PLAINTIFF's CAT BALL cat bed.

7 141. This use of PLAINTIFF'S product trade dress in PLAINTIFF's CAT BALL cat bed on or
8 in connection with DEFENDANT's goods or services, and/or on DEFENDANT's containers for
9 its goods, constitutes use in of a word, term, name that is a false designation of origin, false or
10 misleading description of fact, or false or misleading representation of fact, which is likely to
11 cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association
12 of DEFENDANT with PLAINTIFF, and also is likely to cause confusion, or to cause mistake, or
13 to deceive as to the origin, sponsorship, or approval of DEFENDANT's goods, services, or
14 commercial activities by PLAINTIFF.

15 142. DEFENDANT willfully and intentionally committed the acts described in the preceding
16 two paragraphs.

17 143. PLAINTIFF has sustained and will continue to sustain substantial damages and harm
18 including harm to PLAINTIFF's reputation and goodwill due to DEFENDANT's acts.

19 144. PLAINTIFF is entitled to compensatory, statutory and enhanced damages, attorneys' fees
20 and costs of suit incurred in connection with this action, and preliminary and permanent
21 injunctive relief.

1 **FIFTH CAUSE OF ACTION**

2 **STATE FALSE ADVERTISING, RCW 9.04.010 AND RCW 9.04.050**

3 145. PLAINTIFF realleges paragraphs 1 through 144 above as if fully set forth herein.

4 146. DEFENDANT's acts as described above, demonstrate that DEFENDANT has published,
5 disseminated or displayed, or caused to be published, disseminated or displayed, one or more
6 instances of false, deceptive or misleading advertising, with knowledge of the facts which render
7 the advertising false, deceptive or misleading.

8 147. DEFENDANT's acts were for business, trade or commercial purposes or for the purpose
9 of inducing, or likely to induce, directly or indirectly, the public to purchase, consume, lease,
10 dispose of, utilize or sell at least DEFENDANT's accused products or cease to purchase
11 PLAINTIFF's CAT BALL cat bed products.

12 148. DEFENDANT' acts violate the Washington State False Advertising statutes, RCW
13 9.04.010 and RCW 9.04.050.

14 149. PLAINTIFF are entitled to compensatory, statutory and enhanced damages, attorneys'
15 fees and costs of suit incurred in connection with this action, and preliminary and permanent
16 injunctive relief.

17 **SIXTH CAUSE OF ACTION**

18 **STATE LAW UNFAIR COMPEITION, RCW 19.86.020**

19 150. PLAINTIFF realleges paragraphs 1 through 149 above as if fully set forth herein.

20 151. DEFENDANT' actions described above constitute unfair methods of competition and
21 unfair or deceptive acts or practices in the conduct of any trade or commerce.

1 152. PLAINTIFF are entitled to compensatory, statutory and enhanced damages, attorneys'
2 fees and costs of suit incurred in connection with this action, and preliminary and permanent
3 injunctive relief.

4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for relief as follows:

7 PLAINTIFF realleges paragraphs 1 through 152 above as if fully set forth herein.

8 1. For a determination that DEFENDANT has engaged in false advertising in violation of
9 Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

10 2. For a determination that DEFENDANT has intentionally and willfully engaged in false
11 advertising in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

12 3. For a determination that DEFENDANT has engaged in unfair competition by use of
13 PLAINTIFF'S "CAT BALL" brand name in violation of section 43(a)(1)(A) of the Lanham Act,
14 15 U.S.C. § 1125(a)(1)(A)

15 4. For a determination that DEFENDANT has intentionally and willfully engaged in unfair
16 competition by use of PLAINTIFF'S "CAT BALL" brand name in violation of section
17 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

18 5. For a determination that DEFENDANT has engaged in unfair competition by use of
19 PLAINTIFF's packaging trade dress in PLAINTIFF's "CAT BALL" cat bed in violation of
20 section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

21 6. For a determination that DEFENDANT has intentionally and willfully engaged in unfair
22 competition by use of PLAINTIFF's packaging trade dress in PLAINTIFF's "CAT BALL" cat bed

1 in violation of section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

2 7. For a determination that DEFENDANT has engaged in unfair competition by use of
3 PLAINTIFF's product trade dress in PLAINTIFF's "CAT BALL" cat bed in violation of section
4 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

5 8. For a determination that DEFENDANT has intentionally and willfully engaged in unfair
6 competition by use of PLAINTIFF's product trade dress in PLAINTIFF's "CAT BALL" cat bed in
7 violation of section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

8 9. The Court enter judgment that DEFENDANT has violated the Washington State False
9 Advertising statutes, RCW 9.04.010 and RCW 9.04.050.

10 10. The Court enter judgment that DEFENDANT has intentionally and willfully violated the
11 Washington State False Advertising statutes, RCW 9.04.010 and RCW 9.04.050.

12 11. The Court enter judgment that DEFENDANT competed unfairly in violation of RCW
13 19.86.020.

14 12. The Court enter judgment that DEFENDANT has intentionally and willfully competed
15 unfairly in violation of RCW 19.86.020.

16 13. The Court enter judgment regarding DEFENDANT as follows:

17 A. The Court enter judgment finding that this is an exceptional case;

18 B. The Court issue temporary, preliminary, and permanent injunctions ordering
19 DEFENDANT to, *inter alia*, immediately cease all distribution and dissemination of
20 advertisements stating that DEFENDANTS' accused products are "unique" and/or "one-
21 of-a-kind" and any colorable facsimile of such statement;

1 C. The Court order a recall of all of the DEFENDANTS' advertising, websites, and
2 the like currently in the marketplace containing any false or misleading statement
3 described herein or otherwise proven during this litigation;

4 D. The Court order DEFENDANT to engage in a program of corrective advertising,
5 satisfactory to PLAINTIFFS, to ameliorate the false and misleading information that
6 DEFENDANTS have promulgated;

7 E. The Court order a recall of all of the DEFENDANTS' accused products currently
8 in the marketplace;

9 F. The Court grant an award of all damages permitted under law to compensate
10 PLAINTIFFS for injury it has sustained as a consequence of DEFENDANTS' unlawful
11 acts;

12 G. The Court grant an award of enhanced damages as appropriate;

13 H. The Court grant an award of punitive damages in an amount sufficient to punish
14 and deter DEFENDANT from engaging in further knowing acts of false advertising
15 and/or unfair competition;

16 I. The Court grant the reasonable attorneys' fees PLAINTIFF incurs in connection
17 with this action;

18 ///

19 ///

20 ///

- 1 14. For costs of this lawsuit; and,
2 15. For such further other, different and/or additional relief as the Court deems just and
3 equitable.

4
5 DATED this 28th day of February, 2014.

6 Respectfully submitted,

7 /s/Joshua King
8 Joshua King, WSBA #22244
9 Graybeal Jackson LLP
Attorneys for PLAINTIF
THE CAT BALL, LLC

DEMAND FOR JURY TRIAL

PLAINTIFF THE CAT BALL, LLC hereby demands a jury trial of all claims and issues herein on which it is entitled thereto.

DATED this 28th day of February, 2014.

Respectfully submitted,

/s/Joshua King
Joshua King, WSBA #22244
Graybeal Jackson LLP
Attorneys for PLAINTIF
THE CAT BALL, LLC